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Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 4 *ter*, 5, 6, 9, 10 and 14

Proposals and contributions received from Governments

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*A/AC.254/15.

V.99-84163 (E)

II. Proposals and contributions received from Governments

Poland

Article 9

Jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3 ([Criminalization of] participation in an [organized criminal group]), 4 (Money-laundering) and 4 *ter* (Measures against corruption) of this Convention when:

(a) The offence is committed in the territory of that State;

(b) The offence is committed on board a vessel that is flying the flag of that State or an aircraft that is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national [or a habitual resident] of that State;

(b) The offence is committed by a habitual resident of that State;

(c) The offence is committed on board a vessel or an aircraft that is operated by the Government of that State; or

(d) The offence involves public officials of that State or affects the [proper] functioning of its public administration [and/or financial institutions].

3. If the State exercising its jurisdiction under paragraphs 1 or 2 of this article has been notified, or otherwise learned, that one or more other States are conducting an investigation or carrying out criminal proceedings in respect of the same conduct, its competent authorities shall consult all interested parties with a view to resolving the matter and coordinating their actions. Until a solution has been reached, each of the States involved will take all necessary measures to examine, collect or test evidence that may not be available subsequently for the purposes of a trial.

4. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article, as well as any changes thereto.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

6. The provisions of this article shall not affect the obligations with regard to the establishment of jurisdiction over offences pursuant to any other international treaty.

Article 10: Extradition

Proposed amendments

1. Insert the following three new paragraphs:

"15. If necessary, the offences established in articles 3 ([Criminalization of] participation in an [organized criminal group]), 4 (Money-laundering) and 4 *ter* (Measures against corruption) of this Convention shall be treated, for the purposes of extradition between State Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with paragraphs 1 and 2 of article 9 (Jurisdiction).

"16. For the purposes of extradition under this article, the offences established in articles 3 ([Criminalization of] participation in an [organized criminal group]), 4 (Money-laundering), and 4 *ter* (Measures against corruption) of this Convention shall not be considered fiscal offences or political offences or regarded as politically motivated, without prejudice to the constitutional principles and basic concepts of the domestic legal systems of States Parties.

"17. The extradition shall be refused if the facts on which the request is grounded do not constitute an offence under the law of the requested State. To establish double criminality, the competent authorities of that State shall satisfy themselves that the essential [substantial] elements of the conduct described in the request and/or the warrant of arrest correspond to an offence punishable under the laws of their State. The establishment of double criminality with respect to money-laundering is not conditional upon the predicate offence."

Note. Delegates may wish to specify the requirements of double criminality with respect to two other offences established in the Convention, that is, participation in an organized criminal group and corruption [of public officials].

2. Delete the first sentence of paragraph 7.

3. The second (bracketed) sentence of paragraph 7 should read as follows:

"States Parties shall consider surrendering to each other, subject to their domestic law, under speedy and simplified procedures any persons sought for the purpose of extradition, subject to the agreement of the requested State and the consent of such persons, provided that the consent has been expressed voluntarily and in full awareness of the consequences. The requested State shall afford such persons the right to legal counsel."

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II. Proposals and contributions received from Governments

Italy

Article 10: Extradition

1. Following paragraph 6, a provision might be inserted to deal with the extradition of persons sentenced *in absentia*. That provision might be worded as follows:

> "1. The fact that a judgement has been issued in absentia shall not be a ground for refusal if it appears that the case has been tried with the same guarantees as when a defendant is present and if one of the following has occurred:
>
> "(a) The defendant, having knowledge of the trial, has deliberately avoided being arrested; or
>
> "(b) The defendant, having been regularly summoned, has deliberately failed to appear at the trial.
>
> "2. When such conditions are not met, extradition shall in any case be granted if the requesting State gives assurance, deemed satisfactory by the requested State, that the person whose extradition is sought shall be entitled to a new trial protecting his or her rights of defence."

Article 14: Mutual assistance

2. Following paragraph 2, a provision might be inserted permitting spontaneous communication of data. It is suggested that the provision be worded as follows:

> "1. Without prejudice to national law and within the limits of their competence, the judicial authorities of a State Party may, without prior request, tra..smit information relating to criminal matters to a judicial authority in another State where they believe that such information could assist that authority in undertaking or successfully concluding inquiries and criminal procedures or could result in a request formulated by that authority pursuant to this Convention.
>
> "2. The transmission of such information must be without prejudice to inquiries and criminal procedures in the State of the judicial authorities providing the information.
>
> "3. The judicial authorities providing the information may request that the information remain confidential, even temporarily, or may place restrictions on its use."

3. Following paragraph 12, the following provision might be inserted to take into account the needs of the requesting State when enforcing a request for mutual assistance:

> "1. Where mutual assistance is afforded and such formalities and procedures are not contrary to the fundamental principles of law in the requested State, the requested State shall undertake to comply, for purposes of executing letters rogatory, with formalities and procedures expressly indicated by the requesting State. The requested State shall execute the request for assistance as soon as possible and shall take as full account as possible of any deadlines set by the requesting State.

"2. Where the request cannot be executed in full accordance with the requirements set by the requesting State, the authorities of the requested State shall promptly inform the authorities of the requesting State and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting State and the requested State may subsequently agree on further action to be taken concerning the request, where necessary making such action subject to the fulfilment of those conditions."

4. Following paragraph 13, the following paragraphs might be inserted:

"1. Where an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by videoconference if the criminal proceedings for which the hearing was requested provide appropriate guarantees of conformity with its fundamental principles of law and where it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State.

"2. Each application for a hearing by videoconference shall contain, in addition to the details referred to in paragraph 10 of this article, a statement of the reasons why it is not possible or desirable for the witness or expert to attend, the names of the persons who are to conduct the hearing and their status.

"3. The judicial authority of the requested State shall summon the individual concerned to appear in accordance with the terms prescribed by the law of that State.

"4. The following provisions shall apply to hearings by videoconference except as otherwise agreed in individual cases, including also measures for the protection of the individual to be heard:

"(a) The hearing shall be attended by a judicial authority of the requested State, assisted by an interpreter where necessary, who shall also be responsible for ensuring both identification of the individual to be heard and compliance with the fundamental principles of the law of the requested State. If the judicial authority of the requested State judges during the hearing that the fundamental principles of the law of that State are being infringed, it shall immediately take the necessary measures for the continuation of the hearing in accordance with those principles; if that is not possible, the videoconference shall be interrupted;

"(b) The hearing shall be conducted by the judicial authority of the requesting State in accordance with the national law of that State;

"(c) If the individual to be heard is unable to understand, he or she shall be assisted by an interpreter to be provided by the requesting State;

"(d) The individual to be heard may claim the right not to testify provided under the national law of the requested State or the requesting State. Where the individual refuses to testify despite having an obligation to do so or does not testify truthfully, the national law of the requested State is applicable.

"5. Without prejudice to measures agreed for the protection of persons, the judicial authority of the requested State shall, on conclusion of the hearing, draw up minutes indicating the date and place of the hearing, any oaths taken and the fact that the hearing was conducted without any physical or mental pressure on the individual questioned.

"6. All costs related to the holding of the videoconference, including the travelling expenses of the witness or expert in the requested State, shall be refunded by the requesting State to the requested State, which may be provided with the necessary technical equipment by the requesting State if it does not have that equipment.

"7. On the basis of agreements between the central authorities such as those referred to in paragraph 8 of this article, States Parties may, where appropriate, apply the above provisions to hearings by videoconference involving accused persons, in conformity with their national laws and with full respect for human rights."

5. Following paragraph 21, a provision could be inserted regarding joint investigations; such a measure might prove useful in investigations into matters that are the subject of the Convention, but in view of the worldwide framework of the Convention and the lack of homogeneity of the legislations that might be involved, it could be applied only on a regional basis and in accordance with bilateral agreements of a general or case-by-case nature. It is suggested that the provision be worded as follows:

"On a reciprocal basis, States Parties may conclude bilateral or multilateral agreements or understandings whereby, in relation to matters that are the subject of criminal proceedings in one or more States, the judicial authorities concerned may, where necessary together with police authorities and after informing the central authority or authorities referred to in paragraph 8 of this article, act jointly within joint investigation bodies. In the absence of such agreements or understandings, such joint investigations may be undertaken by agreement on a case-by-case basis."

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II. Proposals and contributions received from Governments

Australia

[*See document A/AC.254/L.48.*]

Canada

[*See document A/AC.254/L.42.*]

China

[*See document A/AC.254/L.64 and the amendments to article 14, paragraphs 14 and 16, contained in document A/AC.254/L.50.*]

France and Sweden

[*See document A/AC.254/L.47.*]

India

[*See document A/AC.254/L.43.*]

Lithuania

[Original: English]

Article 4: Money-laundering

Paragraphs 3 (b) and (c)

1. Paragraphs 3 (b) and (c) recommend that States Parties provide for liability for money-laundering in cases where the offender acted for the purpose of making a profit or for the purpose of promoting the perpetration of further criminal activity. Lithuania considers that the wording of those provisions should be revised so as to eliminate the possibility of interpreting the provisions of the Convention as recommending that State Parties commit themselves to prosecute persons who have committed crimes of money-laundering only in cases when the crimes do not have the characteristics indicated in the paragraphs mentioned.

Article 7: Confiscation

Paragraph 7

2. Lithuania considers that paragraph 7 should emphasize that the requirement to demonstrate the lawful origin of the property acquired should be applicable only with respect

to persons convicted for crimes covered by the scope of the Convention. Lithuania is of the opinion that this paragraph could also indicate the legal measures to be taken against a person who has failed to prove the lawful origin of such property. On the other hand, this paragraph should also establish the compatibility of its provisions with the presumption of innocence related to acquisition of property.

Article 7 *bis*: International cooperation for purposes of confiscation

3. Considering that individual States maintain different confiscation procedures and that in certain cases the attitude towards the grounds for the confiscation of property and the principles of application of such a measure differ from State to State, Lithuania considers that article 7 *bis* of the Convention should stipulate that States Parties have the right to refuse to satisfy the request for confiscation in cases where the requesting State took the decision to confiscate property without making a conviction and where in the requested State confiscation is possible only after a conviction has been made.

Article 7 *ter*: Disposal of confiscated assets

Paragraph 1

4. Paragraph 1 provides that proceeds of crime confiscated by a State Party at the request of another State Party shall be disposed of by the State that confiscated them. It is not at all clear on what grounds the confiscating State acquires title to the confiscated property. Note should be taken of the fact that the person who obtained the proceeds from criminal activities is not entitled to those proceeds and the proceeds themselves may in certain cases have been obtained at the expense of the ownership of the State that has requested the confiscation.

Article 10: Extradition

5. Lithuania is of the opinion that the Convention should regulate more consistently the grounds for refusal of extradition by focusing in particular on cases where extradition of a person is refused to a State where he or she is likely to face a cruel or inhuman sentence, including capital punishment.

Paragraph 2

6. Paragraph 2 obliges States Parties to deem the offences to which the Convention applies to be extraditable offences in every international extradition treaty to be concluded with other States. Naturally, it is possible to assume the commitment to stipulate a certain provision in an international treaty only when all of the parties to such a treaty to be concluded undertake analogous commitments to follow such a provision. However, it would be useful to include in the Convention the obligation for States Parties to seek to include the offences covered by the scope of the Convention in the lists of extraditable offences provided for by extradition treaties concluded with States other than States Parties to this Convention.

Paragraph 6

7. Lithuania is of the opinion that paragraph 6 should provide a definition of the term "prejudice", since this term may be used in two senses, to mean either "an unfavourable opinion or feeling formed beforehand or without knowledge, thought or reason" or "any preconceived opinion or feeling, either favourable or unfavourable". Enforcement in the Convention according to the latter meaning of the term, and thus establishment of the right of

States Parties to refuse extradition on the grounds that the State requesting extradition may impose an unreasonably mild punishment on the offender, would be a risky though progressive step towards limiting even further the possibilities for members of organized criminal groups to find a "safe haven".

Paragraph 8

8. Paragraph 8 provides that a State Party may take into preliminary custody only the "person whose extradition is sought". Lithuania ventures to suggest that a more precise definition be provided in the Convention of the moment at which the person may or should be taken into custody. The Convention could also make it clear that States Parties are obliged to apply preliminary detainment before extradition is officially sought.

Article 14: Mutual legal assistance

Paragraph 6

9. Paragraph 6 provides that States Parties may not decline to render mutual legal assistance on the ground of dual criminality unless the assistance required involves the application of coercive measures. Lithuania considers that States should not have to undertake to render mutual legal assistance in all cases, unless their domestic laws provide for liability for the actions with respect to which such assistance is being requested. There is no universally acknowledged legal principle on the basis of which a State must assist another State in applying coercive measures in relation to actions that that State itself does not treat as criminal.

Paragraph 13

10. Paragraph 13 obliges a State Party to establish penal liability for perjury committed via video link or other modern means of communication. Account should be taken of the fact that such perjury is committed in the territory of another State and the issue of establishment of extraterritorial jurisdiction over crimes of this type should therefore be clarified in the Convention.

Article 19: Law enforcement cooperation

Paragraph 2 (c)

11. This subparagraph provides that officials of any State Party participating in joint teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place. Taking account of the basic principle of international cooperation in combating transnational organized crime established in paragraph 4 of article 2 of the draft Convention, this paragraph should be amended by adding a provision that persons participating in joint operations taking place in the territory of another State should not only be specially authorized by but also to a certain extent subordinated to the appropriate authorities of the State where they carry out their activities.

Mexico

[*See the amendment to article 14, paragraph 20, contained in document A/AC.254/L.44.*]

Netherlands

[*See document A/AC.254/L.45.*]

New Zealand

[*See the comments on articles 10 and 14 in document A/AC.254/L.41.*]

Syrian Arab Republic

[*See the comments on articles 10 and 14 in document A/AC.254/L.34.*]

United States of America

[*See the amendments to articles 10 and 14, paragraphs 2-5, contained in document A/AC.254/L.33.*]

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Consideration of the additional international legal instrument against illicit manufacturing of and trafficking in firearms, their parts and components and ammunition

Proposals and contributions received from Governments

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II. Proposals and contributions received from Governments

Belgium

[Original: French]

Article 4: Scope

1. The following new paragraph should be added:

"(...) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law shall not be governed by this Protocol."

* A/AC.254/18.

2. This wording is based on article 19, paragraph 2, of the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex).

Brazil and Norway

[Original: English]

Report on the technical session on firearms regulation, held in Bergen, Norway, from 6 to 8 September 1999

I. Introduction

1. At the initiative of the Ministry of Justice of Norway and the Ministry of Justice of Brazil, an open-ended technical session on firearms regulation was organized in Bergen, Norway, from 6 to 8 September 1999. The representatives of Brazil and Norway alternated as chairmen of the session. The purpose of the session was to exchange information and views on an informal basis on technical matters and to enhance the understanding of the technical questions involved in the revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials, Supplementary to the United Nations Convention against Transnational Organized Crime. The session was organized as a response to the many calls for such a meeting during the sessions of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime. The organizers took note of Economic and Social Council resolution 1999/20 of 28 July 1999, adopted on the recommendation of the Commission on Crime Prevention and Criminal Justice at its eighth session. In that resolution, the Council had recommended to the General Assembly the adoption of a draft resolution in which the Assembly would encourage Member States to convene informal regional or interregional meetings to assist the work of the Ad Hoc Committee. Article 9 of the draft Protocol (A/AC.254/4/Add.2/Rev.1) was used as a basis for the discussion on the marking of firearms. Article 11 of the draft Protocol was used as a basis for the discussion on export/import/transit authorization and licensing. The organizers were pleased with the response to the invitation to participate in the session: there were 60 participants from 26 countries, covering all the regions in the world. The organizers underlined the fact that the aim of the session was not to negotiate the language in the draft Protocol, the Ad Hoc Committee being the only forum authorized to do that. The convening of the session was motivated by a desire to bring to fruition the work on the draft Protocol through a process involving dialogue and mutual understanding. The session was open to all Member States of the United Nations.

II. Marking

2. Papers on marking were presented by the representatives of Australia, Brazil, Canada, China, Japan, South Africa, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America and by the representative of the International Criminal Police Organization (Interpol).

3. After the presentations, there was a general exchange of views on the subject.

4. The discussion revealed that there was general understanding and agreement on the need for individual and appropriate marking of firearms as an essential tool for law enforcement. From a law enforcement perspective, marking was considered vital in tracing

firearms during criminal investigations. The appropriate marking of firearms gave law enforcement a starting point when investigating crimes involving firearms.

5. The participants also discussed possible acceptable information requirements for marking. There were mainly two different approaches as regards the content of markings. The representatives of a number of countries expressed support for the marking requirements contained in the draft Protocol. Furthermore, it was suggested that such standards could include, *inter alia*, the country of manufacture, the date of manufacture, the name of the producer, the serial number, the calibre or gauge and the model.

6. The other approach would be to have the minimum requirements for marking the manufacturer and the serial number. The representatives of some countries felt that it should be left to each State to individualize firearms through registers and/or unique markings of its choice. It was pointed out that it was sufficient to know the country of manufacture, as the authorities of that country could then be contacted for further information on where the weapons might have been transferred. In that case, it was pointed out, it would also be necessary to have an agreement on the methods for universal designation of country names. The focus of the discussion was whether internationally stipulated methods that could individualize firearms on a global basis were needed or whether national standards were sufficient.

7. Another important item was when and how often firearms should be marked. There was general agreement that, regardless of the content of the marking, the firearms should at least be marked at the time of manufacture. A number of participants expressed the view that markings were also necessary when firearms crossed borders. Such markings would save time in investigations, since law enforcement would not have to start at the country of manufacture when trying to trace firearms. There were different views on whether to mark at the time of export and/or at the time of import. It was argued that marking at the time of export could erase clues for tracing illicitly trafficked arms. However, marking at the time of import was underlined as an effective means of ensuring the swift tracing of firearms at the national level. It was further argued that marking at the time of import was necessary since it would confirm the actual delivery of the firearms. Another view maintained that additional marking at import was not necessary since countries could keep their own records of imported firearms based on original markings. That would then provide enough clues for tracing. It was also said that marking at the time of import and/or export was not as cost-effective as marking at the time of manufacture and could pose technical and/or logistical problems. However, it was also pointed out during the discussion that at present there was not sufficient information to determine the cost-effectiveness of marking at the time of manufacture compared with additional marking at the time of import or export.

8. There was general understanding that the discussion on technical methods of marking should include input from the firearms industry. Some of the presentations included new possibilities for marking, such as methods involving microchips, laser identification and metallurgical deformation. The presentations also included marking techniques that would render the firearms inoperable if the markings were to be obliterated. However, it was noted that the traditional form of stamp marking was a good method for marking as it was cost-effective, it was based on existing widespread technology and it was effective. New forms of marking should prove to be at least as cost-effective and effective if they were to be adopted. For law enforcement, it was essential to be able to recover obliterated markings. It was noted that the stamping method was fairly effective. It was also noted that markings should be made as unalterable as possible. It was further noted that it would be

useful to develop simple and inexpensive marking technologies that would make it more difficult to obliterate markings. Moreover, erased markings should be recoverable.

9. Other related issues that were discussed included where to mark, record-keeping and points of contact. Arguments were given in favour of having markings on several parts of the same firearm, such as the barrel, frame and/or receiver and slide. It was noted by several countries that records should be kept for as long as possible since firearms were very durable goods. The representative of Brazil, by presenting SINARM, the Brazilian national firearms registration system, provided a practical example of how record-keeping could be arranged. The importance of establishing contact points through national agencies responsible for handling requests related to the tracing of firearms from other States was stressed.

III. Export/import/transit authorization and licensing

10. Technical papers on the issue of export/import/transit authorization and licensing were presented by the representatives of Australia, Canada, China, the Netherlands, the United Kingdom and the United States.

11. It was noted that, in the national jurisdiction of each of the countries referred to in the technical papers, the export and import of firearms were already subject to regulation. It was argued that control systems already in place were a good point of departure for harmonizing routines for the transfer of firearms. There was broad understanding of the need for effective national systems of licensing or authorization for commercial firearms transfers. Representatives stressed the need to achieve internationally agreeable standards in that regard. The need for further discussion was stressed. It was emphasized that the discussion on that issue had to reflect the responsibility of the countries involved in transfers of firearms. It was a common understanding that not only the importing country, but also the exporting country had a responsibility to ensure that the movement of firearms across its borders was legal and safe. Controls at the stage of exportation could greatly assist law enforcement authorities in other countries in conducting investigations. Thus, an export licence should be issued on the basis of appropriate official documents provided by the importing country. It was noted that, in respect of tracking firearms, it was essential that a chain of evidence be established so that perpetrators of breaches of weapons control could be identified and prosecuted.

12. The presentations and the discussion on the issue also underlined the assistance that licensing and registration documentation provided for law enforcement cooperation between States, as well as for the prosecution of offenders.

13. Some representatives underlined the importance of transit licensing based on the same principles and arrangements as in the case of export and import procedures, particularly in view of the risk of the diversion of firearms when in transit to a third country. It was argued that procedures for transit would make it easier for law enforcement to control and track shipments of firearms, to assist in preventing their diversion and to be provided with improved documentation, which was vital during prosecution. However, it was noted that transit controls should not be seen as a way of diluting the responsibilities or obligations of the original exporting country, the importing country and the stated end-user.

14. The representatives of some European Union member States emphasized the competence of the European Commission on export, import and transit movements, as well as on rules and regulations for the shipment of goods within the European Union.

15. Different views were exchanged on the need for a provision on an end-user certificate. That was also the case with re-export and re-transfer licensing. Some argued in favour of such arrangements, since firearms could be diverted to destinations other than those originally stipulated. Others argued against such arrangements. It was said that, when firearms were exported to the end-user as stated on the export licence, the right to the products was transferred from the exporting country to the importing country and that such an arrangement would interfere with the sovereign rights and jurisdiction of the importing country.

16. The issue of brokering and the need for a provision in the draft Protocol on that issue were also raised. It was noted that the issue posed a number of challenges, including challenges involving the country of jurisdiction and licensing. Another issue related to the definition of legal and illegal brokering and whether to criminalize such activity and, if so, how.

17. For the purpose of information, the representative of the United Kingdom briefly presented a paper on standards for deactivation and indicated that his Government intended to make available modalities of deactivation standards at a later date. Representatives of a number of other countries described deactivation principles and standards in their own countries.

IV. Conclusions

18. It was the general opinion of the participants that the session was very fruitful as it allowed for presentations of in-depth technical studies, as well as the exchange of experiences and views. It was noted that the session in Bergen complemented the International Seminar on Illicit Manufacturing of and Trafficking in Firearms, held in Tokyo on 9 and 10 June 1999. The participants welcomed the technical session to be organized by Japan in Vienna in October 1999. The close coordination of those initiatives would ensure that the draft Protocol would be rooted in the everyday experiences of the law enforcement community.

19. The representatives of countries who had presented papers were encouraged to make available revised versions of their papers as non-papers or as conference room papers to the Ad Hoc Committee at its fifth session, to be held in October 1999, in order to further the understanding of the highly technical issues involved.

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Proposals and contributions received from Government

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Belgium

[*See document A/AC.254/L.35.*]

China

[*See document A/AC.254/L.51.*]

Holy See

[*See document A/AC.254/L.31.*]

Libyan Arab Jamahiriya

[*See document A/AC.254/L.62.*]

Lithuania

[*See document A/AC.254/L.55.*]

Mexico[1]

1. Mexico proposes the addition of the following new article:

Article (...)

Definitions

For the purposes of this Protocol, the following definitions shall apply:

(a) "Illegal trafficking of migrants" shall mean the intentional procurement for irregular or non-documented entry of a person by a criminal organized group into a S of which the person is not a national;

(b) "Irregular or non-documented entry" shall mean the crossing of borders with complying with the necessary requirements for legal entry into the receiving State;

(c) "Vehicle" shall mean any conveyance that may be used for transportation land or air; and

(d) "Ship" shall mean every description of water craft, including non-displacen craft and seaplanes, used or capable of being used as a means of transportation on wa

2. Paragraphs 1 (c), (d) and (e), on illegal residence, profit and fraudulent trave identity documents, should be deleted.

[1] See also document A/AC.254/L.61.

3. Paragraph 2 should be deleted.

Morocco

[*See document A/AC.254/L.60.*]

Syrian Arab Republic

[*See document A/AC.254/L.46, section A.*]

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II. Proposals and contributions received from Governments

Belgium

[*See document A/AC.254/L.57.*]

China

[*See document A/AC.254/L.52.*]

Colombia: amendments to the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime

[Original: Spanish]

Article 5: Status of the victim in the receiving State

1. The following wording is suggested for paragraph 2:

> "2. Each State Party shall give appropriate consideration to humanitarian and support factors in determining the status of migrant of such a victim in its territory when it is the receiving State."

2. In the above text, the word "compassionate" has been replaced by the word "support" since the latter term would be more appropriate bearing in mind that the notion of support would be consistent with the victim assistance and protection measures adopted under the Protocol, such as those in articles 4 and 7. Also, the proposed text stipulates that the status of the victim is that of migrant and not any other status, thus preventing the victim from being liable to any form of punishment by reason of international trafficking.

Article 5 *bis*: Seizure and confiscation of gains

3. The following wording is suggested:

> "States Parties shall take all necessary and appropriate measures to allow the seizure and confiscation of property, instrumentalities and profits derived from the offences described in this Protocol, in conformity with individual guarantees enshrined in their domestic legislation. The proceeds from confiscation shall be used to defray the costs of providing due assistance to the victim."

4. In the suggested wording, the phrase "where deemed appropriate by States Parties and as agreed by them" has been deleted. This is because the agreements between States Parties would relate only to cooperation measures for the detection of offences or the confiscation of property, which would not follow from the proposed text.

5. It is felt that the article should expressly refer to confiscation of property and instrumentalities that is achieved through cooperation between States and to the possibility of sharing such proceeds.

Holy See

[*See document A/AC.254/L.32/Add.1.*]

India

[*See document A/AC.254/L.65.*]

Italy

[*See document A/AC.254/L.30.*]

Libyan Arab Jamahiriya

[*See document A/AC.254/L.63.*]

Lithuania

[*See document A/AC.254/L.56.*]

Mexico: comments and proposals on document A/AC.254/4/Add.3/Rev.2

[Original: Spanish]

Article 3: Obligation to criminalize

1. The following new wording is proposed:

"1. States Parties that have not done so shall adopt such legislation and other measures as are necessary to establish as criminal offences the conduct referred to in article [...] of this Protocol and to impose penalties that take into account the grave nature of such conduct.

"2. To the extent permitted by domestic law, intentional participation in any of the unlawful acts referred to in article [...] of this Protocol shall also be punishable."[1]

Article 4: Assistance for and protection of victims of trafficking in persons

2. The following new wording is proposed:

[1] The wording of this paragraph is based on that of article 4 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (General Assembly resolution 317 (IV), annex).

"1. In appropriate cases and to the extent permitted by domestic law, each State Party:

"(a) Shall prevent any form of punishment from being imposed on persons, in particular women and children, who are victims of international trafficking;

"(b) Shall ensure that victims of trafficking in persons, especially women and children, receive adequate protection;

"(c) Shall inform victims of crimes covered by this Protocol about the relevant court and administrative proceedings;

"(d) Shall protect the privacy of victims of crimes covered by this Protocol by maintaining the confidentiality of legal proceedings related to trafficking in persons;

"(e) Shall assist victims of crimes covered by this Protocol, enabling their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence;

"(f) Shall provide appropriate housing, economic assistance and psychological, medical and legal support for victims of crimes covered by this Protocol;

"(g) Shall provide appropriate housing, education and care for children in governmental custody;

"(h) Shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within its territory.

"2. In addition to the measures provided for in article 7 of this Protocol, each State Party that has not already done so shall enact immigration laws and/or adopt legislative or administrative measures that will enable identified victims of trafficking within its territory, after due consideration is given to humanitarian factors, to remain in its territory temporarily or, where appropriate, permanently."[2]

Article 5: Status of the victim in the receiving State

3. It is proposed that the text of article 5 be merged with that of article 4 as indicated above. Article 5 would thus be deleted.

Article 5 *bis*: Seizure and confiscation of gains

4. It is proposed that article 5 *bis* be deleted.

Article 6: Return of victims of trafficking in persons

5. It is proposed that the title and text of article 6 be replaced by the following:

"*Article 6*

"*Repatriation of victims of trafficking in persons*

"1. Each State Party agrees to facilitate and accept the return of a victim of trafficking in persons who is a national of that State Party or who has the right of abode in the receiving State.

[2] Text based on the proposal of France and the United Kingdom of Great Britain and Northern Ireland, amended by Mexico and Morocco.

"1 *bis*. Each State Party shall agree to facilitate the repatriation of victims of such trafficking who desire to be repatriated or who may be claimed by persons exercising authority over them or whose repatriation is ordered in conformity with the domestic law of each State.[3]

"1 *ter*. Repatriation shall take place only after agreement is reached with the State of destination as to the identity and nationality of the persons concerned, as well as to the place and date of arrival at frontiers. Each Party to this Protocol shall facilitate the passage of such persons through its territory."[4]

"2. At the request of a State Party that is the receiving State, each State Party shall, without due or reasonable delay, verify whether a prson who is a victim of such trafficking is a national of the requested State.[5]

"3. In order to facilitate the return of victims of such trafficking who are without proper documentation, each State Party shall agree to issue, at the request of the receiving State, such travel documents or other authorization as may be necessary to enable such a victim who is a national of that State Party or who has the right of abode in the receiving State to re-enter its territory."

Article 7: Victim rehabilitation

6. It is proposed that the title of article 7 be replaced by the following: "Compensation and restitution to victims".

Article 8: Law enforcement measures

7. It is proposed that the title and text of article 8 be replaced by the following:

"Article 8
"Cooperation

"1. Within the scope of their respective areas of jurisdiction and within the framework of their domestic law, States Parties shall cooperate with one another in preventing and combating international trafficking in persons.

"2. For the purposes of paragraph 1 of this article, States Parties shall exchange information and establish systems of judicial cooperation that will contribute to improving the prevention and combating of unlawful conduct relating to international trafficking in persons. Moreover, they shall cooperate closely with a view to providing adequate protection and assistance for victims of such trafficking."

Article 9: Border controls

It is proposed that the title and text of article 9 be replaced by the following:

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[3] The wording of this paragraph is based on that of article 9, paragraph 2, of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

[4] The wording of this paragraph is based on that of article 9, paragraph 2, of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

[5] No change is proposed in the wording of this paragraph.

"Article 9
"Training

"All States Parties shall provide law enforcement, immigration or other relevant officials with specialized training in the prevention of international trafficking in persons and the treatment of victims of such trafficking, including protection of their human rights, or shall strengthen existing specialized training in that area."

Article 10: Security of travel documents

It is proposed that article 10 be deleted.

Article 11: Verification of documents

It is proposed that article 11 be deleted.

Morocco

[Original: French]

Article 5: Situation of the victim in the receiving State

Paragraph 1

It is proposed that paragraph 1 of article 5 be replaced by the following:

"1. In addition to measures provided for pursuant to article 7 of this Protocol, each State Party that has not done so shall enact immigration laws and/or adopt legislative and administrative measures that permit identified victims of trafficking in persons, after due consideration is given to humanitarian and compassionate factors, to remain in its territory temporarily or, in appropriate cases, permanently."

Syrian Arab Republic

[See document A/AC.254/L.46, sect. B.]

Article 8: Law enforcement measures

6. Adopt footnote 37.

United States of America

[See document A/AC.254/L.54.]

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Fifth session
Vienna, 4-15 October 1999

Proposals and contributions received from Governments

Addendum

Corrigendum

Page 5

Line 10 *should read* shall, without undue or unreasonable delay, verify whether a person who is a victim of such

Footnotes 3 and 4, first line: *for* article 9 *read* article 19

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Addendum

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II. Proposals and contributions received from Governments

Belgium, Poland and United States of America: proposed changes to the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.3/Rev.2)

1. At its fourth session, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime was of the view that the text of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.3/Rev.2) contained redundancies and could be better organized. The proposed changes to the text are indicated below. The delegations of Belgium, Poland and the United States of America did not make substantive changes or attempt to insert in

the draft Protocol any proposals made by other delegations at the fourth session of the Ad Hoc Committee.

Article 4

2. It is proposed that paragraph 1 of old article 7 become paragraph 4 of new article 4 and that paragraph 2 of old article 7 become a footnote to paragraph 2 (d) of article 4.

Article 5 *bis*

3. It is proposed that article 5 *bis* be deleted.

Article 6

4. It is proposed that article 6 be retitled "Repatriation of victims of trafficking in persons". In addition, old article 11 should become paragraph 3 of new article 6 and paragraph 3 of old article 6 should become paragraph 4 of new article 6.

Article 7

5. It is proposed that paragraph 1 of old article 7 become paragraph 4 of new article 4 and that paragraph 2 of old article 7 become a footnote to paragraph 2 (d) of article 4.

Article 8

6. Old article 8 should be renumbered as article 7.

Article 9

7. It is proposed that paragraph 1 of old article 9 become new article 8 and that paragraph 2 of old article 9 become a footnote to new article 8. It is also proposed that paragraphs 2 and 3 of old article 14 become paragraphs 2 and 3 of new article 8.

Article 10

8. Old article 10 should be renumbered as article 9.

Article 11

9. It is proposed that old article 11 become paragraph 3 of new article 6.

Articles 12 and 13

10. Old articles 12 and 13 should be renumbered as articles 10 and 11, respectively.

Article 14

11. It is proposed that old article 14 be renumbered as article 12 and retitled "Stricter measures". It is also proposed that paragraphs 2 and 3 of old article 14 become paragraphs 2 and 3 of new article 8.

Articles 15-18

12. Old articles 15, 16, 17 and 18 should be renumbered as articles 13, 14, 15 and 16, respectively.

Grouping of articles into chapters with titles

13. The following additional proposals are made:

(a) New articles 1-3 of the draft Protocol should be grouped in a chapter entitled "Purpose, scope and criminal sanctions";

(b) New articles 4-6 should be grouped in a chapter entitled "Protection of trafficked persons";

(c) New articles 7-11 should be grouped in a chapter entitled "Prevention, cooperation and other measures";

(d) New articles 12-16 should be grouped in a chapter entitled "Final clauses".

Entire restructured text of the draft Protocol

14. The entire restructured text of the draft Protocol is presented below.

Revised draft Protocol to Prevent, Suppress and Punish[1] Trafficking in Persons, especially Women and Children,[2] Supplementing the United Nations Convention against Transnational Organized Crime[3]

The States Parties to this Protocol,

Taking note of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as "the Convention"),

Gravely concerned by the significant and increasing activities of transnational criminal organizations and others that profit from international trafficking in persons,

Believing that women and children are particularly vulnerable to and targeted by transnational criminal organizations engaged in trafficking in persons,

Declaring that effective action to combat international trafficking in persons, especially women and children, requires a comprehensive, international approach in the countries of origin, transit and destination that includes measures to prevent such

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[1] At the second session of the Ad Hoc Committee, two delegations suggested that the Protocol should focus on the prevention, investigation and prosecution of trafficking, leaving aside the question of punishment.

[2] The terms "persons, especially women and children" and "persons" are used throughout the draft text, as appropriate, in view of the action taken by the Commission on Crime Prevention and Criminal Justice at its eighth session. In particular, the Commission recommended that the Economic and Social Council approve for adoption by the General Assembly a draft resolution entitled "United Nations Convention against Transnational Organized Crime and the protocols thereto", in which the Assembly would decide that the additional international instrument being prepared by the Ad Hoc Committee addressing trafficking in women and children should address trafficking in all persons, but especially women and children, and would also request the Ad Hoc Committee to make any corresponding changes to the draft instrument. At the second session of the Ad Hoc Committee, almost all countries expressed their preference that the Protocol address all persons rather than only women and children, although particular attention should be given to the protection of women and children.

[3] The proposal contained in the present document is based on a combined draft text submitted by the Governments of Argentina and the United States of America pursuant to the commitment they undertook at the first session of the Ad Hoc Committee (see A/AC.254/9). It supersedes the proposals submitted by the United States (A/AC.254/4/Add.3) and Argentina (A/AC.254/8) and takes into account comments made at the first and second sessions of the Ad Hoc Committee (see in particular A/AC.254/5/Add.3). It also incorporates the amendments submitted by Argentina (A/AC.254/L.17). Some delegations suggested that the title of the Protocol should also refer to the "protection of trafficked persons".

international trafficking, to punish[4] the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the sexual exploitation of women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, *inter alia*, an international instrument addressing trafficking in women and children,

Convinced that supplementing the Convention with an international instrument for the prevention, suppression and punishment[5] of trafficking in persons, especially women and children, will be useful in combating that crime,

Taking into account the provisions of the Convention,[6]

Have agreed as follows:

Chapter I. Purpose, scope and criminal sanctions

Article 1.[7] *Purpose*

Option I

1. The purpose of this Protocol is to promote and facilitate cooperation among States Parties to prevent, investigate and punish[8] international trafficking in persons for the purpose of forced labour or sexual exploitation,[9] paying particular attention

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[4] See footnote 1 above.

[5] See footnote 1 above.

[6] Two delegations noted that this Protocol should also take into account work being done in other international forums (i.e. the proposed convention concerning the prohibition and immediate elimination of the worst forms of child labour, which is being drafted by the International Labour Organization, and the draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (see A/AC.254/5/Add.3 and the report of the open-ended inter-sessional working group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on its fifth session, held in Geneva from 25 January to 5 February 1999 (E/CN.4/1999/74)). Two other delegations suggested that reference should be made in the preamble to this Protocol to relevant conventions.

At the second session of the Ad Hoc Committee, some Member States suggested the addition of a non-discrimination clause as a new article 1 of the Protocol.

[7] See footnote 1 above.

[8] At the second session of the Ad Hoc Committee, several countries expressed the view that the terms "sexual exploitation" and "forced labour" should be defined in the text. A number of countries supported a broad definition of both terms so as to ensure that the Protocol would cover all forms of exploitation. Two delegations suggested that the definition of forced labour should include cases of "forced marriage" or "marriage of convenience". One delegation suggested further that the definition should cover cases of forced domestic work. Another delegation suggested the addition of the words "involuntary servitude" to the purpose of this Protocol. For further details, see also footnotes 24 and 25.

to the protection of women and children,[10] who are so often the victims of such trafficking.

2. The purpose is, in particular, to encourage States Parties to undertake:[11]

(a) To adopt effective measures to prevent trafficking in persons, especially women and children, as defined in this Protocol, and to punish[12] severely those who engage in that activity;

(b) To ensure that victims of trafficking in persons, especially women and children, receive appropriate protection;[13]

(c) To promote cooperation among States Parties in order to combat more effectively trafficking in persons, especially women and children;

(d) To provide in appropriate cases for the safe and voluntary[14] return of victims to their countries of origin or of habitual residence or to a third country;

(e) To inform and educate the public about the causes and consequences of trafficking in persons; and

(f) To provide victims with appropriate legal, medical, psychological and financial assistance whenever States Parties deem it necessary.[15]

Article 1. Purpose[16]

Option 2

1. The purpose of this Protocol is the prevention, suppression and punishment[17] of international trafficking in persons, especially women and children.

2. To that end, States Parties undertake:

(a) To adopt effective measures, in accordance with their domestic law, to prevent trafficking in persons, especially women and children, as defined in this Protocol, and to punish[18] severely those who engage in that activity;

(b) To ensure the protection of women and children, in accordance with their best interests;

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[10] At the second session of the Ad Hoc Committee, one delegation suggested that the words "regardless of the sex of the child" should be inserted after the word "children".

[11] At the second session of the Ad Hoc Committee, one delegation suggested that the principle of non-interference into domestic affairs should be reflected in an appropriate way.

[12] See footnote 1 above.

[13] At the second session of the Ad Hoc Committee, one delegation suggested the addition of the words "where necessary" at the end of paragraph 2 (b) of article 1.

[14] At the second session of the Ad Hoc Committee, a number of countries suggested the deletion of the word "voluntary" if paragraph 2 was to be retained (see footnote 15). At the first session, one delegation reminded the Ad Hoc Committee that if victims were returned to their countries of origin against their will, international law regarding refugees was applicable. At the second session of the Ad Hoc Committee, another delegation suggested that the Protocol should ensure the protection of victims against deportation.

[15] At the second session of the Ad Hoc Committee, the delegations of a number of countries supported the deletion of paragraph 3 of article 1 as unnecessary, since it repeated provisions that appeared later in the draft Protocol.

[16] The text of this article was proposed by Argentina at the second session of the Ad Hoc Committee (see A/AC.254/L.17).

[17] See footnote 1 above.

[18] See footnote 1 above.

(c) To adopt relevant penal and administrative provisions for the purpose of preventing, suppressing and punishing[19] international trafficking in persons, especially women and children;

(d) To establish a system of judicial cooperation between States Parties that will facilitate the prosecution of unlawful acts connected with international trafficking in persons, especially women and children;

(e) To inform and educate the public about the causes and consequences of trafficking in persons;

(f) To prevent any type of penalty being imposed on persons, especially women and children, who are victims of international trafficking; and

(g) To abolish progressively those practices which allow a husband, family or clan to order the transfer of a woman to another person for payment or otherwise for the benefit of an international criminal organization.

Article 2. Scope of application

Option 1[20]

1. This Protocol shall apply to trafficking in persons as defined in paragraph 2 of this article.

2. For the purposes of this Protocol, "trafficking in persons"[21] means the recruitment, transportation, transfer, harbouring or receipt of persons, either by the threat or use of kidnapping, force, fraud, deception or coercion,[22, 23] or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, for the purpose of sexual exploitation[24] or forced labour.[25]

3. For purposes of this Protocol, trafficking in persons for the purpose of sexual exploitation includes subjecting to such trafficking a child under the age of

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[19] See footnote 1 above.

[20] At the second session of the Ad Hoc Committee, many delegations expressed their preference for this option. One delegation suggested merging the text of the two options.

[21] At the second session of the Ad Hoc Committee, some delegations suggested that the term "trafficking" should be defined in the text. The question was raised whether trafficking in persons would also include the transportation of a person within a State or whether it necessitated crossing an international border.

[22] At the second session of the Ad Hoc Committee, one delegation expressed concern that it would be difficult to prove "coercion" in practice.

[23] At the second session of the Ad Hoc Committee, one delegation suggested the insertion of the words "or debt bondage" between the words "coercion" and "or".

[24] At the second session of the Ad Hoc Committee, some delegations suggested that the term "sexual exploitation" should be defined in the text (see also footnote 9).

[25] At the second session of the Ad Hoc Committee, two delegations proposed that a new paragraph be added after this paragraph to define the term "forced labour". Some delegations wished to ensure that all forms of exploitation were covered under this Protocol (see also footnote 9). One delegation suggested the addition of the words "involuntary servitude" after the words "forced labour". Another delegation felt that any definition of exploitation needed careful examination and restriction. One delegation expressed its concern that a definition might end up being too broad, which in turn might hamper the implementation of the Protocol. Some delegations suggested that the reference made in option 2, paragraph 2 (d) (vii), to extraction of body organs or organic tissue should be included in option 1 (paragraph 2). One delegation suggested that the scope of application of the Protocol should include pornographic material involving women or children, as referred to in option 2, paragraph 2 (d) (iv).

consent[26] in the jurisdiction where the offence occurs, regardless whether that child has consented.

Article 2. Scope of application and definitions[27]

Option 2

1. The provisions of this Protocol shall apply to any child or woman who is, or habitually resides, in a State Party at the time of commission of an act of international trafficking of which that person is a victim.[28]

2. For the purposes of this Protocol, the following definitions shall apply:

(a) "Child" shall mean[29] any person under eighteen years of age;

(b) "Trafficking in children" shall mean any act carried out or to be carried out for an illicit purpose or aim by a criminal organization, jointly or through any of its members, that involves:

(i) Promoting, facilitating or coordinating the kidnapping, holding or hiding of a child, with or without his or her consent, for profit or otherwise, repeatedly or on one occasion; or

(ii) Offering, delivering or receiving a child in exchange for money or any other payment in kind, or serving as an intermediary in those acts;

(c) "Trafficking in women" shall mean any act carried out or to be carried out for an illicit purpose or aim by a criminal organization, jointly or through any of its members, whether on behalf of another or not, whether for profit or not and whether repeatedly or not, that involves:

(i) Promoting, facilitating or coordinating the kidnapping, holding or hiding of a woman, with or without her consent, for illicit purposes or in order to force her to perform, not perform or tolerate an act or to subject her unlawfully to the power of another person;

(ii) Transporting a woman to or facilitating her entry into another State;

(d) "Illicit purpose or aim" shall mean:

(i) Reduction to slavery, servitude or other similar condition;

(ii) Maintenance of a person in such a condition in order to demand, under the threat of some penalty, the performance of forced and compulsory labour to which the person has not voluntarily consented or in order to force the person, in accordance with custom or by agreement, for payment or free of charge, to provide certain services without the freedom to change his or her condition;

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[26] At the second session, some delegations drew the attention of the Ad Hoc Committee to the fact that the concept of "age of consent" might not be in line with the Convention on the Rights of the Child (General Assembly resolution 44/25, annex).

[27] At the second session of the Ad Hoc Committee, some delegations suggested that if definitions were to be included in the Protocol, they should be placed before the scope of the Protocol.

[28] The text of this paragraph was proposed by Argentina at the second session of the Ad Hoc Committee (see A/AC.254/L.17).

[29] At the second session of the Ad Hoc Committee, one delegation suggested replacing the words "shall mean" with the words "shall include".

(iii) The prostitution or other form of sexual exploitation of a woman or child, even with the consent of that person;

(iv) Any means of production, distribution or importation, in their present or future form, of graphic or audio-visual material focused on the sexual conduct of women or children or on the genitals of such persons;

(v) The organization, promotion or use of tourism-related activities or journeys involving the sexual exploitation of women;

(vi) Promoting, facilitating or coordinating acts aimed at rendering uncertain, changing or annulling the marital status of a woman, in any manner or by any means, whether for payment or not or for the promise thereof, whether in accordance with a traditional or customary practice or not and with or without the use of threats or abuse of authority; or

(vii) Extraction of body organs or organic tissue.

Article 3. Obligation to criminalize

1. Each State Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the conduct set forth in [paragraph 2] [paragraphs 2 and 3][10] of article 2 and shall impose penalties that take into account the grave nature of those offences.

2. Each State Party shall also adopt such measures as may be necessary to establish as criminal offences under its domestic law the following conduct and shall impose penalties that take into account the grave nature of those offences:

(a) Attempting to commit an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2;

(b) Participating as an accomplice in the commission of an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2;

(c) Organizing or directing others to commit an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2; or

(d) In any other way contributing to the commission, by a group of persons acting with a common purpose, of an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2; such contribution shall be intentional and shall either be made with the aim of furthering the general criminal activity or criminal purpose of the group or be made in the knowledge of the intention of the group to commit the offence concerned.

3. The knowledge, intent or purpose required to commit an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2 or in paragraph 2 of this article may be inferred from objective factual circumstances.

[10] The reference to the conduct to be criminalized depends on the choice to be made regarding the content of article 2.

Chapter II. Protection of trafficked persons

Article 4.[11] *Assistance for and protection of victims of trafficking in persons*[12]

1. [In appropriate cases and to the extent possible under domestic law,][13] States Parties shall protect the privacy of victims of crimes covered by this Protocol by maintaining the confidentiality of legal proceedings related to trafficking in persons.

2. In addition to measures provided pursuant to article 7 of this Protocol, each State Party shall ensure that its legislative framework contains measures that permit providing, in appropriate cases:

(a) Information to victims of crimes covered by this Protocol with regard to the relevant court and administrative proceedings;

(b) Assistance to victims of crimes covered by this Protocol, enabling their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence;

(c) Appropriate housing, education and care for children in governmental custody;[14] and

(d) Appropriate housing, economic assistance, psychological, medical and legal support for the victims of crimes covered by this Protocol.[15, 16]

3. Each State shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within its territory.

4.[17] Each State Party shall ensure that its legislative framework contains measures that, in appropriate cases, provide victims of trafficking in persons with access to adequate procedures for seeking:

(a) Compensation for damages, including compensation coming from fines, penalties or, where possible, forfeited proceeds or instrumentalities of perpetrators of trafficking in persons; and

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[11] At the fourth session of the Ad Hoc Committee, several delegations proposed the insertion in this article of additional provisions regarding the protection of victims of trafficking. (See proposed articles 3 *bis* and 4 submitted by Italy (A/AC.254/L.30) and the additional language for article 4 proposed by the Holy See (A/AC.254/L.32).)

[12] Article 4 in document A/AC.254/4/Add.3, dealing with victims, was expanded into three separate articles (articles 4-6), in this draft, each addressing a different aspect of victim assistance.

[13] The language in brackets was proposed in document A/AC.254/4/Add.3.

[14] Two delegations expressed concern about the consistency of this clause with the Convention on the Rights of the Child (see A/AC.254/5/Add.3).

[15] The text of this article was proposed by Argentina at the second session of the Ad Hoc Committee (see A/AC.254/L.17).

[16] Article 7, paragraph 2, of the previous draft (A/AC.254/4/Add.3/Rev.2) read as follows: "Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of and witnesses to crimes covered by this Protocol, in order to foster their health, self-respect and dignity, in a manner appropriate to their age, gender and special needs." That paragraph was deleted, as it was similar to article 4, paragraph 2.

[17] This paragraph appeared in the previous version (A/AC.254/Add.3/Rev.2) as article 7, paragraph 1. It was moved to article 4 in this restructured draft, where it seemed to fit better.

(b) Restitution from the offenders.

Article 5.[38] *Status of the victim in the receiving State*

1. In addition to measures provided pursuant to article 7 of this Protocol, each State Party shall consider enacting immigration laws that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. Each State Party shall give appropriate consideration to humanitarian and compassionate factors in determining the status of such a victim in its territory when it is the receiving State Party.[39]

Article 6.[40] *Repatriation*[41] *of victims of trafficking in persons*[42]

1. Each State Party agrees to facilitate and accept, without delay, the return of a victim of trafficking in persons who is a national of that State Party or who had the right of abode in the territory of that State Party at the time of entry into the receiving State.

2. At the request of a State Party that is the receiving State, each State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of such trafficking is a national of the requested State.

3. Each State Party shall, at the request of another State Party and subject to the domestic laws of the requested State, verify without undue or unreasonable delay the legitimacy and validity of travel or identity documents issued in the name of the requested State and suspected of being used for trafficking in persons.[43]

4. In order to facilitate the return of victims of such trafficking who are without proper documentation, the State Party of which such a victim is a national or in which he or she had the right of abode at the time of entry into the receiving State shall agree to issue, at the request of the receiving State, such travel documents or other authorization as may be necessary to enable the person to re-enter its territory.

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[38] Colombia, France, Morocco and the United Kingdom proposed alternative language for all or part of article 5 (see A/AC.254/5/Add.12).

[39] Article 5 *bis*, entitled "Seizure and confiscation of gains", was deleted by consensus at the fourth session of the Ad Hoc Committee. The consensus was that the subject was covered by a similar provision in the draft Convention and that it was also dealt with in article 4, paragraph 4, of this restructured version.

[40] Two delegations suggested that several articles in this Protocol should be based on articles contained in the proposals of Canada and the United States regarding the draft protocol against smuggling of migrants. The articles of this Protocol thus adapted are articles 6-8 and 10.

[41] The consensus at the fourth session of the Ad Hoc Committee was that the title of this article should be changed from "Return of victims of trafficking in persons" to "Repatriation of victims of trafficking in persons".

[42] Mexico has proposed alternative and additional language for article 6 (see A/AC.254/5/Add.12).

[43] In the previous draft (A/AC.254/4/Add.3/Rev.2), this paragraph appeared as article 11, entitled "Verification of documents". It was moved to article 6, where it seemed to fit better.

Chapter III. Prevention, cooperation and other measures

Article 7[44] [45] *Law enforcement measures*

1. In addition to adopting the measures provided for in this article and pursuant to article 16 of this Protocol, law enforcement authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons without travel documents are perpetrators or victims of trafficking in persons;

(b) Whether individuals have used or attempted to use altered or falsified documentation to cross an international border for the purpose of trafficking in persons;

(c) The methods used by groups for transporting victims of such trafficking under false identities, or with altered or falsified documentation, and the measures for detecting them; and

(d) Methods and means used for trafficking in persons, including recruitment, routes and links between and among individuals and groups engaged in such trafficking.

2. Each State Party shall provide or strengthen training to prevent trafficking in persons for law enforcement, immigration and other relevant officials. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers, and should encourage cooperation with appropriate non-governmental organizations.[46]

Article 8.[47] *Border controls*

1. Each State Party shall adopt such measures as may be necessary to detect and prevent trafficking in persons between its territory and that of any other State Party by strengthening border controls, including by checking persons and travel or identity documents and, where appropriate, by inspecting and seizing vehicles and vessels.

2. States Parties shall take such additional legislative or other measures as they consider appropriate to prevent means of transport operated by commercial carriers from being used in the commission of offences established under this Protocol. Such measures shall include, in appropriate cases, fines and forfeiture to ensure that carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all

[44] See footnotes 36 and 37 for an explanation of how former article 7, entitled "Victim rehabilitation", was consolidated with article 4 in this restructured draft.

[45] Law enforcement and cooperation provisions (e.g. technical assistance, seizure of assets and information exchange) should be included only insofar as they go beyond those contained in the Convention. Article 14 will incorporate provisions from the Convention that are applicable to the subject matter of this Protocol. The Protocol will therefore have to be reviewed and any redundancies removed when the text of the Convention has been developed more fully.

[46] The phrase "including protecting the victims from the traffickers" was added to this paragraph. At the same time, article 9, paragraph 2, of the previous draft (A/AC.254/4/Add.3/Rev.2) was deleted because it was covered by this article. Article 9, paragraph 2, of the previous draft read as follows: "Each State Party shall adopt such training and other measures as may be necessary to ensure that victims of such trafficking who are detected being trafficked by means of legal or illegal migration receive appropriate protection from the traffickers."

[47] See footnote 40 above.

passengers to see that each has a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.[48]

3. Each State Party shall consider adopting measures that permit, in appropriate cases, the revocation or denial of visas to persons, including foreign officials, known to be implicated in crimes covered by this Protocol.

Article 9[49] *International travel documents*[50]

1. States Parties shall adopt such measures as may be necessary to ensure that travel or identity documents issued by them are of such quality that they cannot readily be unlawfully altered, replicated, issued or otherwise misused.

2. Each State Party shall adopt such measures as may be necessary to ensure the integrity and to control the lawful creation, issuance, verification, use and acceptance of travel or identity documents issued by or on behalf of the State Party.

Article 10[51] *Prevention of trafficking in persons*

1. Each State Party shall consider establishing social policies and programmes to prevent:

(a) Trafficking in persons; and

(b) The revictimization of trafficked persons, especially women and children.

2. States Parties [shall endeavour to[52]]:

(a) Undertake, including through non-governmental organizations, information campaigns and programmes to generate public awareness of the gravity of offences relating to international trafficking in persons. Such programmes should include information on potential victims, causes and consequences of such trafficking, penalties for unlawful acts and the risks that such offences represent to the life and health of the victims;

(b) Establish methods for gathering data and promote research to determine the modus operandi of international trafficking in persons;

(c) Encourage, within the private sector, the establishment of professional associations, foundations, non-governmental organizations and research institutes concerned with the problem of international trafficking in persons; and

(d) Disseminate information relating to the different forms of international trafficking in persons and undertake programme actions to combat such trafficking.

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[48] Article 14, paragraphs 2 and 3, of the previous draft (A/AC.254/4/Add.3/Rev.2) was moved to article 8, paragraphs 2 and 3, of this restructured draft, where they seemed to fit better.

[49] See footnote 40 above.

[50] The previous title of this article ("Security of travel documents") was changed to "International travel documents" by consensus at the fourth session of the Ad Hoc Committee, so as not to cause confusion for States that may have internal travel or identity documents that are not intended to be regulated by this Protocol.

[51] The proposal by China (A/AC.254/L.52) for an article 7 *bis*, entitled "Measures to eliminate trafficking in women and children [persons]", could be considered here.

[52] The language in brackets was proposed in document A/AC.254/8.

3. States Parties [shall[53]] [are encouraged to[54]] provide the Secretary-General of the United Nations with a list of non-governmental organizations devoted to preventing the unlawful acts covered in this Protocol with a view to compiling a database that will enable the non-governmental organizations and States Parties to exchange information.

Article 11. Cooperation with non-States Parties

States Parties [shall[55]] [are encouraged to[56]] cooperate with non-States Parties to prevent and punish[57] trafficking in persons and to protect and care for victims of such trafficking. To that end, appropriate authorities of each State Party [shall[58]] [are encouraged to[59]] notify the appropriate authorities of a non-State Party whenever a victim of such trafficking who is a national of the non-State Party is in the territory of the State Party.

Chapter IV. Final clauses

Article 12.[60] Stricter measures[61]

States Parties may adopt measures stricter than those provided for in this Protocol if, in their opinion, such measures are desirable to prevent, combat and eradicate the crimes covered by this Protocol.

Article 13.[62] Savings clause

Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention[63] and the 1967 Protocol[64] relating to the Status of Refugees.

Article 14. Other provisions

The provisions of articles [...] of the Convention shall also apply *mutatis mutandis* to this Protocol.

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[53] The language in brackets was proposed in document A/AC.254/8.

[54] The language in brackets was proposed in document A/AC.254/4/Add.3.

[55] The language in brackets was proposed in document A/AC.254/8.

[56] The language in brackets was proposed in document A/AC.254/4/Add.3.

[57] See footnote 1 above.

[58] The language in brackets was proposed in document A/AC.254/8.

[59] The language in brackets was proposed in document A/AC.254/4/Add.3.

[60] See footnote 40 above.

[61] In the previous draft (A/AC.254/4/Add.3/Rev.2), this article was article 14, entitled "Other measures". Article 14, paragraphs 2 and 3, of the previous draft became article 8, paragraphs 2 and 3, in this restructured draft. The title of the article was changed from "Other measures" to "Stricter measures", which better describes new article 12. This article was article 14, paragraph 1, in the previous draft.

[62] See footnote 40 above.

[63] United Nations, *Treaty Series*, vol. 189, No. 2545.

[64] Ibid., vol. 606, No. 8791.

Article 15. Signature, accession and ratification

1. This Protocol shall be open for signature, by any State that has signed th Convention, at [...] from [...] to [...] and thereafter at United Nations Headquarters in Ne York until [...].

2. This Protocol is subject to ratification. Instruments of ratification shall b deposited with the Secretary-General of the United Nations.

3. This Protocol is subject to accession by any State that has signed or acceded the Convention. Instruments of accession shall be deposited with the Secretary-General the United Nations.

Article 16. Entry into force

1. This Protocol shall enter into force on the thirtieth day following the date deposit of the [...] instrument of ratification or accession with the Secretary-General of t United Nations. This Protocol shall not enter into force before the Convention has enter into force.

2. For each State Party ratifying or acceding to the Protocol after its entry in force, the Protocol shall enter into force on the thirtieth day after the deposit by such Sta of the instrument of ratification or accession.

[The Protocol can rely on the Convention's provisions on denunciation, amendme languages and depositary.]

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respecti Governments, have signed this Protocol.

United Nations A/AC.254/5/Add.14

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Consideration of the revised draft United Nations Convention against Transnational Organized crime, with particular emphasis on articles 4 *ter*, 17 *bis* and 20-30

Proposals and contributions received from Governments

Addendum

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* A/AC.254/20.

II. Proposals and contributions received from Governments

Netherlands

[Original: English]

Article 22

Prevention at the national level

1. States Parties shall endeavour to take appropriate measures, such as education and vocational training, to shield socially vulnerable groups from recruitment by criminal organizations.

2. States Parties shall seek to reduce existing or future opportunities for criminal organizations to participate in legal markets while acquiring proceeds of criminal offences envisaged in this Convention, through appropriate legislative and/or administrative measures. These measures should focus on:

(a) The prevention of the misuse of legal persons by criminal organizations, by such measures as:

(i) The establishment of public[1] records on legal persons and natural persons involved in the establishment, management and funding of legal persons;

(ii) The introduction of the possibility to disqualify by court order for a reasonable period of time persons convicted of criminal offences envisaged in this Convention from acting as directors of legal persons incorporated in their jurisdiction;

(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

(iv) The exchange of information contained in the records referred to in subparagraphs (a) (i) and (iii) above with competent authorities in other States Parties;

(b) The strengthening of cooperation between law enforcement agencies or public prosecutors and relevant private entities, including industries;

(c) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular, lawyers, notaries public, tax consultants and accountants; and

(d) The prevention of participation in tender procedures conducted by public authorities of applicants who have been convicted for criminal offences envisaged in this Convention and the prevention of granting subsidies or licences to such applicants.

3. States Parties shall assist persons convicted of criminal offences envisaged in this Convention in their reintegration into society, for example, through treatment, training programmes and aftercare, with a view to reducing recidivism.

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[1] The use of the word "public" is intentional in order to avoid any discussion on confidentiality. Furthermore, the reasoning behind its use is that most legal systems will have records on legal persons that are accessible to the public.

4. Each of the States Parties shall endeavour:

(a) To analyse patterns of and trends in transnational organized crime by systematically gathering information on organized crime within its territory;

(b) To evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to abuse by criminal organizations;

(c) To develop and evaluate national projects aimed at the prevention of transnational organized crime; and

(d) To establish and promote best practices to prevent transnational organized crime.

New Zealand*

[Original: English]

Article 4 ter: Measures against corruption

New Zealand would prefer the first option in the article, being a less prescriptive approach to the treatment of organized crime in this article. The article should recognize the different legal frameworks in various Member States by providing more generally for the element of organized crime to be considered.

Poland

[Original: English]

Article 19

Paragraph 3

1. Paragraph 3 of article 19 should be inserted in article 22 *bis* as paragraph 2 and the present text of article 22 *bis* should become paragraph 1. The proper place for paragraph 3 of article 19 is within the context of prevention at the international and not the national level, for the following reasons: firstly, this provision uses words such as "States Parties shall cooperate", "pursuant to bilateral or multilateral agreements", "exchange information" and "coordinate administrative and other measures", which clearly indicate the international dimension of its subject matter. Secondly, both the language and the substance of this provision are perfectly in line with the language used in article 22 *bis* ("States Parties shall collaborate") and do not fit into the scheme provided for in article 22.

2. In subparagraph (b) of former paragraph 3 of article 19, replace the words "Exchange information in accordance with their national law" with the words "Exchange information and process criminal intelligence using, where appropriate, arrangements provided by the International Criminal Police Organization".

* Comment previously issued in document A/AC.254/L.41.

Article 20

Paragraph 1

3. In the first sentence, after the word "activities", add the words "between each other and through the facilities provided by the International Criminal Police Organization".

4. In the second sentence, replace the words "In this connection," with the words "For this purpose,".

Syrian Arab Republic

[Original: Arabic]

A. Amendment previously issued in document A/AC.254/L.34

Article 4 ter: Measures against corruption

1. Since acts of corruption are necessarily treated as offences in the laws of States, there needs to be provision for more severe punishment for those acts in connection with organized crime. It would therefore be preferable to retain the first option proposed by Uruguay because of its clarity and precision.

B. Further amendments

2. Having reviewed the Arabic version of the revised draft Convention, the Syrian Arab Republic would like to propose amendments to articles 4 *ter*, 17 *bis*, 20-22, 22 *bis*, 22 *ter*, 23, 24, 26 and 27.

Article 4 ter: Measures against corruption

Paragraph 1

3. Remove the square brackets.

Paragraph 2

4. Add the words ", in accordance with its constitutional principles," after the words "shall adopt", in line with article 4 (Money-laundering).

5. Add the words "under its domestic law" after the words "to establish as criminal offences the following conduct", in line with article 4 (Money-laundering).

6. Add the words "within the framework of transnational organized crime" after the words "organized criminal group".

7. Remove the square brackets.

Paragraph 4

8. This paragraph should be revised to read as follows, in line with article 4 (Money-laundering):

> "Each State Party shall also take such measures as may be necessary to establish as criminal offences:

"(a) Participation in the perpetration of any offence provided for in this article;

"(b) Collusion or conspiracy to commit such an offence;

"(c) Initiation or instigation of the perpetration of such an offence; or

"(d) Facilitation of the perpetration of such an offence, provision of assistance in the perpetration of such an offence, or provision of advice to that effect."

Paragraph 4 bis

9. Remove the square brackets.

10. Add the words "within the framework of transnational organized crime" at the end of the paragraph.

Paragraph 5 (b)

11. Delete subparagraph (b), because subparagraph (a) renders it unnecessary.

Paragraph 6

12. Adopt the definition contained in footnote 77, provided that the words "or person" are added after the words "or other official".

Article 17 bis: Bribery of witnesses and intimidation of witnesses and officials

13. Add the words ", in accordance with its constitutional principles," after the words "shall adopt".

14. Add the words ", within the framework of its domestic law" after the words "to establish as criminal offences the following conduct".

15. Remove the square brackets.

16. Add the words "within the framework of transnational organized crime" after the words "organized criminal group".

Subparagraph (b)

17. Replace the words "the exercise of official duties by a justice or security official" with the words "the exercise of official duties by a person or a justice or security official", because the current text is limited to officials and does not cover witnesses.

Article 20: Collection and [exchange] of information on organized crime

Title

18. Remove the square brackets.

Paragraph 2

19. Delete the words between square brackets.

Article 21: Training and technical assistance

Paragraph 5

20. Remove the square brackets.

Article 22: Prevention at the national level

Paragraph 5

21. Delete the paragraph.

Article 22 bis: Prevention at the international level

Paragraph (a)

22. The words "a focal point" need to be clarified.

Article 22 ter: Communications from States Parties

23. The period between square brackets should be fixed at 24 months.

Article 23

24. Adopt option 3.

Article 24: Relation with other conventions

25. Adopt option 1.

Article 26: Signature, ratification, acceptance, approval, accession and reservations

Title

26. Delete the word "reservations".

Paragraph 1

27. Add the words "at the United Nations Office at Vienna" after the words "to all States".

28. The signing period in Vienna should be of three months and should start from the date of adoption of the Convention. For New York the signing period should be one year from the date of adoption.

Paragraphs 3, 4 and 5

29. Paragraphs 3, 4 and 5 should be combined in a separate article entitled "Reservations", with paragraph 4 being deleted and the square brackets in paragraphs 3 and 5 removed.

Article 27: Entry into force

Paragraph 1

30. Replace the words "on the thirtieth day" with the words "on the ninetieth day", in line with article 29, paragraph 1, of the 1988 Convention.

31. The Convention's entry into force should start from the date on which the fortieth instrument of ratification, acceptance, approval or accession is deposited so as to underline the global nature of the Convention.

United Nations A/AC.254/5/Add.15

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Proposals and contributions received from Governments

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* A/AC.254/20

II. Proposals and contributions received from Governments

China*

[Original: English]

Article 7

1. After paragraph 10, insert a new paragraph as follows:

"(...) If a suspicion proves to be unfounded and the vessel being suspected has not committed any act to justify further suspicion, a State Party that has taken action in accordance with this article shall make compensation for any loss or damage that may have been sustained to that vessel."

New article 11 bis

2. After article 11, add a new article [11 *bis*] as follows:

"*Article 11 bis*

"*Measures to eliminate the root causes*

"States Parties shall ensure the strengthening of international cooperation in order to eliminate the root causes of the smuggling of migrants, such as poverty and underdevelopment."

Holy See**

[Original: English]

Article 11

Prevention

1. ....

2. ....

Additional paragraphs

(...) States Parties shall foster development programmes and cooperation at the national, regional and international levels, paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the trafficking in migrants.

(...) States Parties shall encourage cooperation on immigration and asylum policies and shall adopt such global migration strategies as may be necessary to prevent trafficking in migrants.

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* Amendments previously issued in document A/AC.254/L.51.

** Amendments previously issued in document A/AC.254/L.31.

Lithuania*

[Original: English]

Article 9: Additional legislative and administrative measures

1. Lithuania would like to point out that, on the basis of the *non bis in idem* principle, the sanctions provided for in article 9 may be applied to commercial carriers only in cases where no actions are brought against them for smuggling migrants. Lithuania ventures to express the view that the current wording of the article may leave it open to interpretation as stipulating that, on the basis of the same *non bis in idem* principle, commercial carriers guilty of smuggling migrants should bear administrative responsibility only and not be charged for smuggling migrants.

Article 10: Information

Paragraph 2

2. Paragraph 2 of article 10 of the draft Protocol would obligate States Parties to undertake preventive measures ensuring that potential migrants do not become victims of crimes committed by organized criminal groups. Lithuania would like to draw attention to the fact that the draft Convention could set obligations to take preventive measures ensuring the rights not only of potential migrants, but also those of migrants in the process of being transported and migrants who have already been transported.

3. In the opinion of Lithuania, the use of the term "victim" raises some doubts. The term "victim" suggests illegal violence used against a person. Lithuania therefore considers that in a case where a migrant may be considered the victim of a crime, the crime itself shall be recognized as trafficking in persons and not as smuggling migrants.

Syrian Arab Republic

[Original: Arabic]

A. Amendments previously issued in document A/AC.254/L.46

Article 7: Measures against the smuggling of migrants by sea

Paragraph 1

1. Replace the words "all generally accepted relevant international instruments" with the words "all relevant international instruments in force".

Paragraph 5

2. Delete the phrase "and to a request for authorization made pursuant to paragraph 3 of this article" because the phrase would obligate the State Party to respond to the requested authorization, while paragraph 3 of this article allows the flag State to authorize the requesting State.

* Comments previously issued in document A/AC.254/L.55.

Paragraph 13

3. Replace the words "all generally accepted relevant international instruments" the words "all relevant international instruments in force in the State concerned".

Paragraph 14

4. Explain the meaning of "operational arrangements in relation to specific cases

Article 8: Compliance measures and arrangements

Paragraph 1

5. Add the words "subject to their fundamental legal principles" after the word "ad

Paragraph 2

6. Delete the word "illegal" in subparagraph (a).

Article 9: Additional legislative and administrative measures

7. Add the words "subject to their fundamental legal principles" after the words " take".

8. [Not applicable to the English text.]

Proposed additional articles

9. Articles should be added on the following questions:

(a) Assistance to the victims of smuggling, similar to article 4 of the revised Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women Children;

(b) Status of smuggled persons in the receiving State, similar to article 5 o revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Espec Women and Children;

(c) Seizure and confiscation of gains, similar to article 5 *bis* of the revised Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women Children.

B. Further amendments

10. Having reviewed the Arabic version of the revised draft Protocol, the Syrian Republic would like to propose amendments to articles 7, 8, 9 and 11, as well as to su additional articles.

Article 7: Measures against the smuggling of migrants by sea

Paragraph 1

11. Replace the words "generally accepted" with the word "applicable".

Paragraph 5

12. Delete paragraph 5, because it would oblige the State Party to respond to the request for authorization, whereas paragraph 3 of article 7 would provide for the flag State to authorize the requesting State to board and inspect the vessel and to take appropriate action.

Paragraph 13

13. Replace the words "generally accepted relevant international instruments" with the words "relevant international instruments applicable in the State concerned".

Paragraph 14

14. The words "operational arrangements in relation to specific cases" need to be clarified.

Additional paragraph

15. The Syrian Arab Republic endorses the proposal made by China (A/AC.254/L.51) to add a new paragraph after paragraph 10 (see above under **China**).

Article 8: Compliance measures and arrangements

Paragraph 1

16. Add the words ", in accordance with its basic legal principles," after the words "shall adopt".

Paragraph 2

17. Delete the word "illegal" in subparagraph (a), because trafficking is an illegal act in itself.

Article 9: Additional legislative and administrative measures

18. Add the words ", in accordance with its basic legal principles," after the words "shall take".

19. The word "forfeiture" needs to be clarified.

Article 11: Prevention

20. The Syrian Arab Republic endorses the two paragraphs proposed by the Holy See (A/AC.254/L.31) for addition to this article (see above under **Holy See**).

Article 11 bis

21. The Syrian Arab Republic endorses new article 11 *bis*, proposed by China (A/AC.254/L.51) (see above under **China**).

Additional articles

22. Articles relating to the following issues should be added:

(a) Assistance for and protection of victims of trafficking in persons, in line with article 4 of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

(b) Status of the victim in the receiving State, in line with article 5 of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

(c) Seizure and confiscation of gains, in line with article 5 *bis* of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

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Consideration of additional international legal instruments: draft instrument against trafficking in persons, especially women and children, with particular emphasis on articles 8-18

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* A/AC.254/20.

V.99-89891 (E)

II. Proposals and contributions received from Governments

China*

[Original: English]

Article 13

It is proposed that article 13 be replaced with the following:

"Article 13

"Cooperation with non-States Parties

"This Protocol encourages States Parties to cooperate with non-States Parties on the basis of equality and reciprocity for the purpose of this Protocol."

Holy See

[Original: English]

A. Amendment previously issued in document A/AC.254/L.32

Article 12

Prevention of trafficking in persons

1. ...

2. ...

(a) ...

Additional subparagraphs

(...) Encourage the mass media to fight against the reification of women and children, the marginalization of women and the social stigmatization of victims of trafficking;

(...) Encourage educational efforts by families and by schools and other educational institutions concerning human rights and values linked to the fight against trafficking in persons;

(...) Implement development and employment strategies in economically and socially depressed areas, making use of the human resources of local communities;

(b) ...

Additional subparagraphs

(...) Raise awareness of the social responsibility of the private sector and encourage its efforts against trafficking in persons;

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* Amendment previously issued in document A/AC.254/L.52.

(...) Support cooperation and cultural exchange with different ethnic communities and encourage the involvement of these communities in prevention and rehabilitation programmes against trafficking;

(d) ...

3. ...

B. Amendment previously issued in document A/AC.254/L.32/Add.1

Article 12: Prevention of trafficking in persons

Paragraph 2 (c)

Replace the word "Encourage" with the words "Encourage and support".

India*

[Original: English]

Article 13: Cooperation with non-States Parties

1. India would prefer "shall" to "are encouraged to".

Article 15: Savings clause

2. At the end of the article add the following words: ", and also including any bilateral or regional conventions relating to trafficking in women and children."

Mexico**

[Original: Spanish]

Article 8: Law enforcement measures

1. It is proposed that the title and text of article 8 be replaced with the following:

"*Article 8*

"*Cooperation*

"1. Within the scope of their respective areas of jurisdiction and within the framework of their domestic law, States Parties shall cooperate with one another in preventing and combating international trafficking in persons.

"2. For the purposes of paragraph 1 of this article, States Parties shall exchange information and establish systems of judicial cooperation that will contribute to improving the prevention and combating of unlawful conduct relating to international trafficking in persons. Moreover, they shall cooperate closely with a view to providing adequate protection and assistance for victims of such trafficking."

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* Amendments previously issued in document A/AC.254/L.65.

** Amendments previously issued in document A/AC.254/5/Add.12.

Article 9: Border controls

2. It is proposed that the title and text of article 9 be replaced with the following:

"*Article 9*

"*Training*

"All States Parties shall provide law enforcement, immigration or other relevant officials with specialized training in the prevention of international trafficking in persons and the treatment of victims of such trafficking, including protection of their human rights, or shall strengthen existing specialized training in that area."

Article 10: Security of travel documents

3. It is proposed that article 10 be deleted.

Article 11: Verification of documents

4. It is proposed that article 11 be deleted.

Syrian Arab Republic

[Original: Arabic]

A. Amendments previously issued in document A/AC.254/L.46

Article 8: Law enforcement measures

1. The Syrian Arab Republic agrees with the content of footnote 37.

Article 9: Border controls

Paragraph 2

2. [Not applicable to the English text.]

Article 12: Prevention of trafficking in persons

Paragraph 2

3. Delete the square brackets.

Paragraph 3

4. Delete the words "[are encouraged to]".

Article 13: Cooperation with non-States Parties

5. Delete the words "[are encouraged to]" before the words "cooperate" and "notify".

Article 18: Entry into force

6. The number of instruments of ratification or accession required to be deposited for the Protocol to enter into force should be the same as the number required for the Convention to enter into force.

B. Further amendments

Article 12: Prevention of trafficking in persons

Paragraph 2

7. The Syrian Arab Republic supports the proposal by the Holy See (A/AC.254/L.32) to add three new subparagraphs after subparagraph 2 (a) (see above under **Holy See**).

8. The Syrian Arab Republic also supports the proposal by the Holy See (A/AC.254/L.32) to add two new subparagraphs after subparagraph 2 (b) (see above under **Holy See**).

9. The Syrian Arab Republic further supports the proposal by the Holy See (A/AC.254/L.32/Add.1) to replace the word "Encourage" in subparagraph 2 (c) with the words "Encourage and support".